

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIC BACCEGA,

Plaintiff,

- against -

42-18 LLC

Defendant.

Docket No. 1:20-cv-1679

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Eric Baccega (“Baccega” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant 42-18 LLC (“42-18” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of a narwhal, owned and registered by Baccega, a professional photographer. Accordingly, Baccega seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York and is registered with the New York Department of State Division of Corporations.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Baccega is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 10 rue des Pres, 67240 Oberhoffen Sur Moder Paris France.

6. Upon information and belief, 42-18 is a foreign limited liability company duly organized and existing under the laws of the State of Delaware, with a place of business at 787 Seventh Avenue, 48th Floor, New York, New York 10019. Upon information and belief, 42-18 is registered with the New York State Department of Corporations to do business in New York. At all times material hereto, 42-18 has owned and operated a website at the URL: www.InsideHook.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Baccega photographed a narwhal (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Baccega added his watermark to the Photograph. See Exhibit A.

9. Baccega is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph was registered with United States Copyright Office and was given Copyright Registration Number VA 2-189-909.

B. Defendant's Infringing Activities

11. 42-18 ran an article on the Website entitled *You Can Now Go Narwhal Watching With Alex Trebek*. See: <https://www.insidehook.com/article/arts-entertainment/you-can-now-go-narwhal-watching-with-alex-trebek>. The article featured the Photograph. A screenshot of the Photograph on the Website is attached hereto as Exhibit C.

12. 42-18 did not license the Photograph from Plaintiff for its article, nor did 42-18 have Plaintiff's permission or consent to publish the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. 42-18 infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. 42-18 is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by 42-18 have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

SECOND CLAIM FOR RELIEF

**INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
DEFENDANT
(17 U.S.C. § 1202)**

18. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-17 above.
19. Upon information and belief, in its article on the Website, Defendant cropped out Plaintiff watermark.
20. Upon information and belief, 42-18 intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.
21. The conduct of 42-18 violates 17 U.S.C. § 1202(b).
22. Upon information and belief, 42-18's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.
23. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by 42-18 intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph. 42-18 also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph.
24. As a result of the wrongful conduct of 42-18 as alleged herein, Plaintiff is entitled to recover from 42-18 the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by 42-18 because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

25. Alternatively, Plaintiff may elect to recover from 42-18 statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant 42-18 be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant 42-18 be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
6. That Plaintiff be awarded punitive damages for copyright infringement;
7. That Plaintiff be awarded attorney's fees and costs;
8. That Plaintiff be awarded pre-judgment interest; and
9. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
February 26, 2020

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